

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2002

CORAM

THE HON'BLE MR. JUSTICE R. JAYASIMHA BABU
AND
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

L.P.A.No.70 of 1998
and
C.M.P.No.9435 of 1998

B.S. Nagarajan ... Appellant

-Vs-

K.B. Sivasankaran ... Respondent

Prayer: Letters Patent Appeal under Clause XV of the Letters Patent against the judgment and decree of the Hon'ble Mr. Justice S.S. Subramani dated 02-04-1997 passed in A.S.No.93 of 1988 on the file of the High Court, Madras, reversing the judgment and decree dated 25-09-1985 passed by the learned XVth Assistant, City Civil Judge, Madras in O.S.No.77 of 1979.

!For appellant :: Mr. R. Mohan

^For respondent :: No appearance for R2 to R5
For R1 :: Died

:JUDGMENT

PRABHA SRIDEVAN,J.

The appellant was granted a 60 year lease on 07-05-1949 by the trustee of the respondent-temple. A suit was filed in 1979 for recovery of possession by the respondent. The appellant resisted the suit and inter alia claimed the benefits of the City Tenants' Protection Act, 1921('the Act' in short). The suit was dismissed on the ground that the respondent is not entitled to recover possession of the suit property before the stipulated lease period. The learned Single Judge, however, held that the respondent-temple was governed by the provision of the Hindu Religious & Charitable Endowments Act, 1959 (1959 Act in short) or the Madras Religious Endowments Act, 1927 (1927 Act in short) and the lease granted without the sanction of the Board was invalid and that "at the most, while he can say that he is not a trespasser..", he has no legal status as a tenant. Alongwith this appeal, the learned Single Judge also disposed of the revision filed by the appellant herein against the dismissal of the petition under Section 9 of the Act. Against this, the appellant filed a Special Leave Petition and we are

informed that he was directed to agitate his rights as a city tenant in this appeal.

2. According to the learned counsel for the appellant, in earlier proceedings, the respondent pleaded a different case. Two suits were filed by the parties herein, both for injunction against each other. The judgment in appeal filed against those suits was marked in this suit as Ex-B17. The appeal had ended in favour of the appellant holding that he had proved possession on the date of suit. It was also urged on behalf of the appellant that there is no evidence to show that the suit property is subject to the provisions of either the 1959 Act or the 1927 Act. So, the restrictions on alienation would not apply to the lease between the parties and even assuming that the 60 year lease is invalid, there should be an implied lease, in view of the documents marked by the appellants and therefore, the tenant was entitled to the protection under the Act.

3. The lease deed was entered into before the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 came into force. The law then applicable was the Madras Hindu Religious Endowments Act, 1927. This Act was intended, inter alia, to provide for the better administration and governance of certain Hindu Religious Endowments.

4. Under Section 76 of the 1927 Act, no exchange, sale or mortgage and no lease for a time exceeding five years of any immovable property belonging to any [math, temple or specific endowment] shall be valid or operative unless it is necessary or beneficial to the [math, temple or specific endowment] and is sanctioned [by the Board].

5. In this case there has been no sanction from the Board. The case of the appellant is that the temple is not governed by the provisions of the Act and therefore, this restraint will not apply. While deciding the right of the respondent to file the suit for recovery of possession, the Trial Court held in favour of the respondent because his right as a hereditary trustee was upheld in view of Ex-A4. Ex-A4 is the copy of the decree in O.S.No.7132 of 1978 filed by the respondent under the provisions of the 1959 Act. The plaintiff/ respondent had filed a petition to declare himself as the hereditary trustee of the Temple. The authorities under the 1959 Act, held against him in A.P.No.47 of 1976. So he filed a suit under Section 70 of the H.R. & C.E. Act. The suit was decreed in his favour declaring his right to be a hereditary trustee. It is clear therefore, that the respondent's right to act as hereditary trustee has been asserted only by invoking the provisions of the 1959 Act.

6. In the 1959 Act, 'hereditary trustee' has been defined as the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such schemes of succession is in force and 'religious institution' has been defined as a math, temple or specific endowment;

7. This is not very different from the definition of 'hereditary trustee' in the 1927 Act wherein it is defined as the trustee of a

math, temple or specific endowment succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force and 'temple' has been defined as a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship.

8. Section 84 of the 1927 Act deals with the settlement of disputes by the Board and one such dispute is referred to in Section 84(b) i.e., "whether a trustee is a hereditary trustee as defined in this Act or not."

In the note to this Section in Madras Hindu Religious Endowments Act, 1927, third edition, by P. Ramanatha Iyer it is stated as follows:

"(1) N.B.-- Now S.84 was substituted for old S.84 by Madras Act IV of 1930. The reason for this amendment has been stated as follows: "Doubts have been raised as to whether disputes as to private character of temples can be dealt with by the Board under section 84 as it is. The proposed amendment is intended to make the meaning and the object of the legislature clear; such doubts have been based on the existence of the definition of 'temple' and 'math' as meaning a public temple and a public math." -- (Statement of objects and Reasons.) That has been superseded by the present section substituted by Madras Act X of 1946."

So the claim to hereditary trusteeship rests on whether the claimant satisfies the definition in the Act. Therefore, under Ex-A4, the right of hereditary trusteeship to a public temple had been declared. There are no materials to the contrary.

(Emphasis supplied)

9. The judgment in Ex-B17 referred to by the learned counsel for the appellant does not come to his aid, since all that the learned Judge has found in that case was that on the date of those suits the appellant was in possession. The learned counsel for the appellant would attempt to bring to our notice a finding in the judgment of the Trial Court in O.S.No.5592 of 1993 and O.S.No.1897 of 1993, against which the appeals in Ex-B17 arose. That was not marked as an exhibit and we cannot take into consideration any finding therein eventhough they may be in the appellant's favour.

10. The learned counsel for the appellant also referred to a statement made by the appellant in the cross-examination which is, "Sivasankaran is the hereditary trustee of the private temple who is the plaintiff".

It was urged that this was a suggestion made by the appellant and it would go to show that even the case of the respondent was that it was a private temple. No such conclusion can be drawn from a stray sentence in the evidence. On the other hand, the respondent had stated in cross-examination that for the temple "contribution should be made to the endowment-board." Therefore, once this issue is held in favour of the respondent then the alienation which is against the provisions of the Act can have no legal effect

and as per Section 76 of the 1927 Act must be held to be invalid.

11. The appellant cannot protect his possession pleading implied tenancy either. Prior to the suit, the respondent had issued Ex-A2 notice, dated 22-03-1973 informing the appellant that the respondent had no authority to lease out the land for more than five years and that on receipt of the notice it was open to the appellant to have a lease deed executed in his favour.

12. The appellant claims that he did not receive this notice. But, however, Ex-A3 has been marked which is dated 28-07-1973, in which there is reference to a notice dated 21-07-1973 issued by the appellant claiming leasehold right in the land. In Ex-A3 also, the respondent has clearly denied that the appellant had any leasehold right in the land and that unless his right is declared, the respondent will not recognize the appellant as a tenant and further the tenants in the property had attorned their tenancy to the respondent and that they are paying rent from 1st July 1973 and that the appellant has no right either to the land or the superstructure. Therefore, even if monthly payments have been received they cannot be considered as evidence of implied tenancy. The tenant, therefore, cannot claim any right under the Act. And again, once the appellant had pleaded express tenancy as evidenced by Ex-A1 and that alone, he cannot now plead implied tenancy and even for that there is no basis. It is also a matter of record that the appellant has sub-leased the property. So he cannot claim any rights under the Act because the persons who can claim the protection of the Act are tenants who are in physical possession. So the two decisions cited by him in *M. Ramasamy Pillai (dead) by LRs., Vs. The Hazarath Syed Shah Mian Sakkaf Khadiri Thaikal* (AIR 1992 SC 2 295 at 2297 and *S. Shanmugavel Nadar Vs. State of Tamil Nadu* (2002 IV CTC 234) do not come to his aid since the deal with tenants who are entitled to the Tamil Nadu City Tenants' Protection Act. The question whether the Amendment Act of the City Tenants' Protection Act is valid, therefore does not require consideration for disposing this appeal.

13. Of course, an attempt was made by the learned counsel for the appellant to show that still some portion of it is retained. The demarcation of the portion in his occupation was not done and there is no dispute that a major area of the superstructure is not in his possession. This poses another hurdle in the way of the appellant.

14. We see no reason to interfere with the finding of the learned Judge regarding the invalidity of the lease granted by the respondent violating the provisions of the Madras Hindu Religious Endowments Act. The appellant is also not entitled to any benefit as a city tenant, since he is not in physical possession as there are sub-tenants in the property. In view

of the legal notice calling upon the appellant to have a proper lease deed executed in this regard and that his continuance in possession is not as a lessee, the question of implied tenancy also does not arise.

15. The letters patent appeal is therefore, dismissed. No

costs. The connected miscellaneous petition is also dismissed.

Index: Yes

Website: Yes

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To

The XVth Assistant, City Civil Judge,

Madras

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